IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 799 OF 2006

Dungarmal Bhudraji Porwal. ...Appellant
V/s.
Ahemad Amin Tamboli ...Respondent

Shri Bhushan Walimbe for the Appellant.
None for the Respondent.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 13, 2007

P.C. :-

. Heard the learned Counsel for the appellant.

2. A suit was filed by the appellant for mandatory injunction directing the respondent herein from encroaching the common lane between the two properties which were owned by the appellant and the other respondent. The trial Court decreed the suit, however, the appellate court set aside the said finding and observed that distance between the two properties varied from 25 cm to 28 cm. It is an admitted position that width between two buildings was 1 ft. or about 13 inches. Then the construction commenced and it was completed. When the Court Commissioner was appointed, he took measurement and gave a report in which he stated

that the distance between the width of the length varied from 25 cm to 28 cm and this was because of the uneven measurement of the stones which were used for the construction. It was, therefore, held that there was no deliberate attempt on the part of the respondent to contend the length as agreed between the parties. It was further observed that the objection which was raised by the appellant herein was for the purpose of maintaining the privacy between the parties. The appellate Court observed that the plaintiff could have claimed damages in respect of loss suffered by him in putting the window shutters inside his house.

3. The learned Counsel for the appellant submitted that the appellate court had erred in recording this finding.

4. In my view, no substantial question of law is raised in this second appeal and the finding recorded by the lower Court is a finding of fact. Hence, no case is made out for interfering with the order.

. Hence, Second Appeal is dismissed.

(V.M. KANADE, J.)